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IN THE

Supreme Court of the United States

OCTOBER TERM, 1962

No. 316

BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS, FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES AND BROTHERHOOD OF RAILROAD SIGNALMEN OF AMERICA, *Petitioners*,

v.

ANNA MAE ALLEN, ET AL., *Respondents*.

REPLY TO OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

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ARGUMENT

This reply is made for the purpose of pointing out certain inaccuracies and misleading statements in the Opposition of the respondents which may result in misunderstanding the issues in this case.

1. In the first paragraph of their Opposition, in the statement of the Question Presented, the respondents say that it has been established and is no longer being

contested that petitioners will subject respondents to compulsion that was adjudged unlawful in *International Association of Machinists* v. *Street*, 367 U.S. 740.

It has not been so established, and if there is any such adjudication it is certainly contested. In the *Street* case this Court held that individual employees who are unwilling union members under a railroad union-shop agreement and who are opposed to particular political or ideological objectives supported by union funds derived from dues and who make such opposition known to the union would be entitled to limited relief against such expenditure of their funds, such as a return of a portion of their dues or an injunction against such expenditure of a portion of their dues. In this case none of the respondents is a member of or has paid any money to the petitioners under the union shop, there has been no adjudication that petitioners would so spend any of respondents' dues or other funds should they pay any, there has been no determination that respondents have advised petitioners of anything, and so the entire premise of the respondents' statement of the Question Presented is non-existent.

We submit that even if the Question Presented were as stated by respondents, the answer would be that the remedy granted below is inconsistent with this Court's decision in the *Street* case, for the reasons stated in our Petition.

2. The respondents state in the last paragraph starting on page 2, under "Statement of the Case", that the unions do not question that it has been established that dues and fees receipts are used to influence votes in public elections, and point to twenty-nine pages of

exhibits (R. 303-32) setting forth contributions made to campaigns of candidates for public office.

This presentation of respondents is grossly misleading. Those twenty-nine pages are lists of contributions to campaigns of candidates for public office. But the uncontradicted testimony,—with not one word to the contrary,—is that every cent of that money was paid from funds voluntarily contributed by various people, union members and others, and that not one cent of it came from union dues or fees. The contributions listed on those twenty-nine pages are contributions made to candidates for political office by the Committee on Political Education of the AFL-CIO and Railway Labor's Political League. The uncontradicted testimony, with not one word to the contrary, is that every cent of those contributions was paid from contributions voluntarily made for such purposes, and that not one cent of it came from dues or fees paid to either of the petitioners; there is simply not one word in the record to support the assertion of counsel for respondents that any of that money was paid directly or indirectly from union dues and fees, and certainly not from dues or fees paid to either of the petitioners. R. 138, 141-2, 144-5, 154, 159-61, 164-6, 167-73, 175, 189, 237-47.

3. In the full paragraph on page 3 of their Opposition the respondents mention certain special editions of the newspaper Labor supporting *in past years* certain candidate for public office. Since none of respondents have paid any dues to the unions, it is clear that none of their dues was used to support that newspaper, ignoring the fact that there is no showing that respondents opposed any of those candidates. There is no evidence that the lodges to which respondents would

pay dues if they became members subscribe to Labor. R. 188.

In the same paragraph they mention certain expenditures by the AFL-CIO for legislative and other purposes. They do not even contend that any such expenditures promoted causes opposed by respondents or opposed causes supported by respondents, that even if they did that respondents made that fact known, or that even if they made that fact known their dues were used for such purposes. Obviously their dues were not used for such purposes, for they have not paid any dues.

4. In the first paragraph on page 5, respondents say that the question of proper remedy is the only question which the unions are contesting. They misunderstand us. It is the unions' position that the respondents have not presented a cause of action under *International Association of Machinists* v. *Street*, 367 U.S. 740, for the reasons, among others, that they did not advise the unions of any particular expenditure made by the unions to which they were opposed, and not having been members since there has been a union-shop agreement no money paid by them was used for such purposes.

5. On page 7 the respondents quote from this Court's opinion in the *Street* case that: "Restraining the collection of all funds from the appellees sweeps too broadly." But then on page 8 they argue that the order in this case does not restrain the collection of all funds from respondents because although at the present time it restrains the collection of all funds from respondents, if the unions, in the future, go through certain procedures and make certain showings to the

trial court, the order may, or may not, be modified. This is a contradiction in terms. It is clear that the unions are restrained from collecting anything from respondents, and it is equally clear that such restraint is contrary to this Court's ruling in the *Street* case.

6. In the last paragraph beginning on page 12, supposedly substantiated by the excerpts from the Record on pages 13-16, respondents argue that it is unnecessary "to pursue the petitioners into the absurdities of their position" because the respondents in this case made known to the unions "repeatedly and unmistakably" that they objected to the unions supporting candidates and causes selected by the unions instead of candidates and causes selected by the respondents.

All the excerpts on pages 13-16 are from testimony given at the trial; clearly the views "repeatedly and unmistakably" made known to the unions were made known a little late. The full testimony of the respondents is summarized on pages 39-53, 58-66, 90-2 of the Record. As we pointed out in our petition, not one of the respondents, although asked, could name a single candidate or a single item of legislation or any other cause supported or opposed by the union contrary to his or her views, with the single exception that two or three of them would have objected to the unions supporting the enactment of section 2, Eleventh of the Railway Labor Act, the amendment permitting union-shop agreements in the railroad industry; the support of that legislation necessarily and obviously preceded any payment of money under compulsion of a union shop. Nor do respondents in their Opposition mention a single candidate or cause supported or opposed by the petitioners contrary to the views of any respondent.

7. In our Petition we argued that since respondents, apart from not paying any money to the unions, did not make known to the unions their opposition to any cause supported by the unions with funds they would have paid had they been members, they would have been "voluntary or acquiescing" dues payers under the *Street* case had they paid any dues. The respondents say we took that phrase from the *Street* opinions where it was used "purely in reference to the class-action infirmity in that case. . . ." Again, that is not so. The phrase was taken from the dissenting opinion of Mr. Justice Black. 367 U.S. at 795. Even that dissenting opinion expresed the view, in accord with the opinion of the Court, that employees who do not protest to the unions the expenditure of their funds to support causes or doctrines opposed by them must be regarded as "voluntary or acquiesing" dues payers. The respondents were not and are not dues payers at all.

CONCLUSION

The issues in this case are not contained in the Question Presented in the Opposition of the respondents. The questions are those contained in the Questions Presented of the Petition. As a result of the decisions below those questions are answered in the affirmative. In substance it was held below that a union may be enjoined from enforcing a union-shop agreement against respondents on a mere showing that the union spends a portion of its funds in support of or in opposition to legislation or candidates, regardless of whether respondents' views are in accord with or in opposition to the causes supported by the union, regardless of whether the respondents made known their views to

the union, and regardless of whether respondents have ever paid any money to the union.

Such holding is contrary to the holding in the *Street* case and is not supported by any of the opinions in the *Street* case. In any event, whether such holding is sound is surely a question of such importance that it should be passed upon by this Court.

Respectfully submitted,

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